

MINUTES

OF THE

AUGUST 23, 2018 REGULAR MEETING



OF THE

OKLAHOMA WORKERS' COMPENSATION COMMISSION

STATEMENT OF OKLAHOMA OPEN MEETING LAW COMPLIANCE

Notice of this Regular Meeting was filed with the Secretary of State's office on Monday, November 13, 2017 at 9:05 a.m., in compliance with the Open Meeting Act.

The agenda was posted at least 24 hours in advance of the meeting, in compliance with the Open Meeting Act. It was posted on the Commission website and at 1915 N. Stiles Ave., Oklahoma City, Oklahoma, the Commission's principal office.

MINUTES OF THE AUGUST 23, 2018 REGULAR MEETING OF THE OKLAHOMA WORKERS' COMPENSATION COMMISSION

The members of the Oklahoma Workers' Compensation Commission met at 1915 N. Stiles Ave., 2nd floor, Oklahoma City, Oklahoma, on August 23, 2018.

Members present: Chairman Mark Liotta, Commissioner Jordan Russell, and Commissioner Megan Tilly.

Others Present: Executive Director Hopper Smith, WCC; Sarah Greenwalt, WCC; Dana Esparza, WCC; Collin Fowler, WCC; Stormy Moore, WCC; and Eric Russell, WCC.

Chairman Liotta expressed appreciation for those in attendance. After the roll was taken, he announced the presence of a quorum. The meeting was called to order at approximately 1:30 p.m.

Approval of Minutes

Chairman Liotta presented the minutes of the July 19, 2018, public meeting for approval.

Motion: Commissioner Tilly moved to approve the minutes of the July 19, 2018 public meeting.

Second: Commissioner Russell.

Those voting aye: Chairman Liotta, Commissioner Russell, Commissioner Tilly.

The motion carried.

1. Discussion and Consideration of Distribution of Surplus Monies to Members of the Oklahoma Automobile Dealers Self-Insurance Association.

Oklahoma Automobile Dealers Self-Insurance Association, a group self-insurance association, is requesting a partial distribution of surplus monies back to its members in the amount of \$4,500,000 which will be payable from fund years FY 17-18 (\$1,000,000), FY 16-17 (\$1,000,000), FY 15-16 (\$1,500,000), FY 14-15 (\$1,000,000). The partial distribution will be made to all of the current active or otherwise qualified members which participated in those fiscal years.

Commission Rule 810:25-11-10 states that any surplus monies may be declared refundable by the association's board. The date and manner of the distribution shall be declared by the association's board and shall be in accordance with the association's bylaws. The board shall submit the distribution request to the Commission, with all supporting documents. The Commission considered approving the distribution of surplus monies to members of the Oklahoma Automobile Dealers Self-Insurance Association.

Stormy Moore was recognized, reported, and made a recommendation. She recommended the approval of distribution of surplus monies to members of the Oklahoma Automobile Dealers Self-Insurance Association, and responded to questions of the Commissioners.

Motion: Commissioner Tilly moved to approve distribution of surplus monies to members of the Oklahoma Automobile Dealers Self-Insurance Association.

Second: Commissioner Russell.

Those voting aye: Chairman Liotta, Commissioner Russell, Commissioner Tilly.

The motion carried.

2. Proposed Commission Approval of Group Self-Insurance Application for New Membership:

Commission Rule 810:25-11-3 states that a new membership to a self-insurance group may not become effective without Commission approval. All applications for membership are filed with the Commission. The application includes evidence of the execution of the indemnity agreement, power of attorney, and joint and several liability agreement, as required by Commission Rule 810:25-11-15, with signed approval of the applicant by the association, and is accompanied by a current balance sheet and income statement and estimated standard and discounted premium the applicant will pay during the period between the application effective date and the association's renewal.

The Commission considered approving the application of **#886 Cooper Lincoln of Edmond, LLC** for new membership to the **Oklahoma Automobile Dealers Self-Insured Association (#75058)**.

The Commission considered approving the application of **#887 Blue Badger investments of Perry, LLC dba Seth Wadley Ford Perry** for new membership to the **Oklahoma Automobile Dealers Self-Insured Association (#75058)**.

Stormy Moore was recognized, reported, recommended approval of all memberships, and responded to questions of the Commissioners.

Motion: Commissioner Tilly moved to approve all memberships.

Second: Commissioner Russell.

Those voting aye: Chairman Liotta, Commissioner Russell, and Commissioner Tilly.

The motion carried.

3. Discussion and Consideration of Releasing the Security Deposit of Beaver County Memorial Hospital Own Risk Permit#13070

Pursuant to Commission Rule 810:25-9-19, a security deposit posted with the Commission as required by Commission Rule 810:25-9-4 must remain in place, at its existing amount, for two years after an individual own risk employer voluntarily leaves self-insurance. A security deposit may be reduced or released at the Commission's discretion after the two-year waiting period upon application by the employer and submission of current financial statements and workers' compensation loss runs. The Commission considered releasing the security deposit of Beaver County Memorial Hospital.

Stormy Moore was recognized, reported, recommended releasing the security deposit of Beaver County Memorial Hospital, and responded to questions of the Commissioners.

Motion: Commissioner Russell moved to release the security deposit of Beaver County Memorial Hospital.

Second: Commissioner Tilly.

Those voting aye: Chairman Liotta, Commissioner Russell, and Commissioner Tilly.

The motion carried.

4. Proposed Approval of Independent Medical Examiners and a Medical Case Manager for the Commission

Title 85A O.S., § 112 requires the Workers' Compensation Commission to create, maintain and review a list of licensed physicians who shall serve as independent medical examiners (IME). The Commission shall, to the best of its ability, include the most experienced and competent physicians in the specific fields of expertise utilized most often in the treatment of injured workers. The period of qualification for physicians shall be two (2) years. Likewise for case managers, 85A O.S., § 113 requires a list of qualified case managers be developed, maintained and periodically reviewed by the Commission. The period of qualification for case managers is two (2) years.

The Commission considered approving the list of physicians and case manager presented at the meeting that have been vetted by the Medical Director and recommended to have their applications approved.

Dr. Jay Cannon was recognized, reported, recommended approving the list of physicians and case managers presented, and responded to questions of the Commissioners.

Motion: Commissioner Tilly moved to approve the list of physicians and case managers presented.

Second: Commissioner Russell.

Those voting aye: Chairman Liotta, Commissioner Russell, and Commissioner Tilly.

The motion carried.

5. Discussion of Mileage Reimbursement Rates

The Commission discussed and considered an appropriate mileage reimbursement rate for its employees and non-state employees who perform substantial and necessary services for the State. Under 74 O.S. § 500.4(B)-(C), reimbursements for the “use of privately owned motor vehicles may be authorized by the agency head,” and “shall not exceed the amount prescribed by the Internal Revenue Code of 1986”

The Commissioners considered whether the Commission—as a nonappropriated state agency—can set its own reimbursement rate or must use the reimbursement rate established by OMES under 74 O.S. § 85.45I (which states that OMES “shall publish a schedule of reimbursement rates for state employee travel.”).

Sarah Greenwalt was recognized, reported, and responded to questions of the Commissioners.

Motion: Commissioner Tilly moved to approve the mileage rate established by OMES for both employees and non-employees.

Second: Commissioner Russell.

Those voting aye: Chairman Liotta, Commissioner Russell, and Commissioner Tilly.

The motion carried.

6. Consent Agenda for Travel Vouchers Currently Outstanding

Title 85A O.S. § 23 states any Commissioner or employee of the Commission shall be entitled to receive his or her necessary traveling expenses as provided in the State Travel Reimbursement Act.

The expenses shall be certified by the person who incurred them and shall be allowed and paid on presentation of vouchers approved by the Commission. In accordance with this section, the Commission will consider a vote to approve the currently outstanding vouchers. All vouchers listed within this Consent Agenda have been made available to each Commissioner prior to today's meeting, are considered routine, and will be enacted by one motion of the Commission. If separate discussion is desired, that item may be removed from the Consent Agenda and voted upon separately.

Chairman Liotta was recognized, reported, recommended approval of the consent agenda, and responded to questions of the Commissioners.

Motion: Commissioner Tilly moved approve the Consent Agenda as presented.

Second: Commissioner Russell.

Those voting aye: Chairman Liotta, Commissioner Russell, and Commissioner Tilly.

The motion carried.

7. Discussion and Consideration of the Effect of the Oklahoma Board on Judicial Compensation's Action Setting Judicial Salaries on the Compensation of the Workers' Compensation Commissioners.

Pursuant to 85A O.S. § 19(B), "each Commissioner shall receive a salary equal to that paid to a district judge of this state; provided however, the commissioners shall not receive any increase in salary as a result of the provisions of Section 1 of [HJR 1096]." Passed in 2014, HJR 1096 set the salaries for district court judges, associate district court judges, and special district court judges at a specific amount beginning July 1, 2014.

Since that time, the Board on Judicial Compensation has recommended, and the Legislature has allowed, further pay increases for district judges. Commissioners' salaries have not been changed to reflect the changes made to district court judges' pay.

The Commission considered both the Board's and Legislature's actions in the intervening years, as well as a verbal recommendation from the Attorney General's office, to determine whether Commissioners' salaries should be raised to match that of district court judges as stated in Section 19(B).

Sarah Greenwalt was recognized, reported, , and responded to questions of the Commissioners.

Motion: Commissioner Tilly moved to continue this agenda item and requests that General Counsel allow the Attorney General's office an opportunity to memorialize its verbal recommendation in an official opinion or memorandum.

Second: Commissioner Russell.

Those voting aye: Chairman Liotta, Commissioner Russell, and Commissioner Tilly.

The motion carried

8. Possible Executive Session Pursuant to Title 25 O.S., § 307(B)(1) for the purpose of discussing personnel issues:

A. Motion and Vote to enter Executive Session under Title 25 O.S. § 307(B)(1). The Commission discussed the employment and/or promotion of Andrea Delling to Chief Financial Officer; the employment of Candidate A to Division Director of Permitting Division; and reassignment of Stormy Moore from Division Director to Financial Analyst.

Motion: Commissioner Tilly moved to enter Executive Session.

Second: Commissioner Russell.

Those voting aye: Chairman Liotta, Commissioner Russell, and Commissioner Tilly.

The motion carried

B. Motion and Vote to Reconvene in Open Session

Motion: Commissioner Tilly moved to reconvene in Open Session.

Second: Commissioner Russell.

Those voting aye: Chairman Liotta, Commissioner Russell, and Commissioner Tilly.

The motion carried

MOTIONS ARISING FROM EXECUTIVE SESSION

9. The Commission discussed the employment and/or promotion of Andrea Delling to Chief Financial Officer.

Motion: Commissioner Tilly moved to promote Andrea Delling to Chief Financial Officer.

Second: Commissioner Russell.

Those voting aye: Chairman Liotta, Commissioner Russell, and Commissioner Tilly.

The motion carried

10. The Commission discussed the employment of Candidate A to Division Director of Permitting Division.

Motion: Commissioner Tilly moved to approve Candidate A for Division Director of Permitting Division.

Second: Commissioner Russell.

Those voting aye: Chairman Liotta, Commissioner Russell, and Commissioner Tilly.

The motion carried

11. The Commission discussed reassignment of Stormy Moore from Division Director to Financial Analyst.

Motion: Commissioner Tilly moved to reassign Stormy Moore from Division Director to Financial Analyst.

Second: Commissioner Russell.

Those voting aye: Chairman Liotta, Commissioner Russell, and Commissioner Tilly.

The motion carried

12. Discussion of Issues to be Referred to the Physicians Advisory Committee

Under 85A O.S. § 17(B)(7), the Physicians Advisory Committee (“Committee”) shall provide general recommendations to the Commission on the issues of injury causation and apportionment. State Question 788, which legalizes use of marijuana in the State for persons who have a state-issued marijuana license, was passed by the voters on June 26, 2018. The Commission discussed possibly referring requests for information to the Committee for its recommendation on workers’ compensation issues surrounding implementation of SQ 788.

Motion: Commissioner Tilly moved propose the following questions as amended:

1. What is the progression of physiological effects, including, without limitation, effects on one’s cognitive, reactive, and physical capabilities, after ingesting marijuana (containing THC)?

2. At what level, and how long, can impairment or intoxication occur?
3. Is there a reliable method to determine at what levels marijuana may contribute to or cause an injury?
4. Are there other issues regarding marijuana ingestion and injury causation of which the Commission should be aware?

Second: Commissioner Russell.

Those voting aye: Chairman Liotta, Commissioner Russell, and Commissioner Tilly.

The motion carried

13. Request to the Physicians Advisory Committee for Assistance in Accessing Medical Information from Scientific Literature

Under 85A O.S. § 17(B)(9), the Physicians Advisory Committee shall “assist the Commission in accessing medical information from scientific literature.” The Commission will discuss requesting the Committee’s assistance in accessing scientific literature related to the use and ingestion of medical marijuana.

Motion: Commissioner Tilly moved propose the following question:

1. Medical information from scientific literature related to the use and ingestion of medical marijuana.

Second: Commissioner Russell.

Those voting aye: Chairman Liotta, Commissioner Russell, and Commissioner Tilly.

The motion carried

14. Request to the Physicians Advisory Committee regarding utilization review

Under 85A O.S. § 17(B)(1) the PAC shall “Assist and advise the Workers’ Compensation Commission regarding utilization review as it relates to the medical practice and treatment of work-related injuries. Such utilization review shall include a review of reasonable and necessary medical treatment, . . .” The Commission will discuss and consider requesting the Committee to review whether medical marijuana is a reasonable and necessary medical treatment for any work-related injuries.

Motion: Commissioner Tilly moved to allow the Legislature the opportunity to address this item before the Commission acts.

Second: Commissioner Russell.

Those voting aye: Chairman Liotta, Commissioner Russell, and Commissioner Tilly.

The motion carried

15. Discussion and Consideration of Current Commission Policies

The Commission will discuss and consider the following current Commission policie(s) and determine if any updates are necessary: the Personnel File Policy.

Motion: Commissioner Tilly moved to continue this agenda item.

Second: Commissioner Russell.

Those voting aye: Chairman Liotta, Commissioner Russell, and Commissioner Tilly.

The motion carried

16. Announcements

The Commission's next regularly scheduled business meeting is on September 20, 2018. The Commission's next regularly scheduled appeals meeting is on September 21, 2018.

ADJOURNMENT.....Chairman Mark Liotta

Motion: Commissioner Tilly moved adjourn.

Second: Commissioner Russell.

Those voting aye: Chairman Liotta, Commissioner Russell, and Commissioner Tilly.

The motion carried. The meeting adjourned.